

contested it on that basis, I think it would be outside my province to pursue consideration of this possibility further.

The Counter Claim is dismissed with costs. Counsel for the plaintiff asked for costs on the higher scale, but did not specify the ground on which he based this application. As I am not satisfied as to the existence of special grounds I am not prepared to grant Mr. Powell's application.

Judgment accordingly.

SERANGOON GARDEN ESTATE LTD. v. ANG KENG.

[A. C. J. (Brown, J.) January 19, 1953]

[Singapore — District Court Appeal No. 29 of 1952]

Practice and Procedure — Stay of execution — Principles upon which stay can be granted.

This appeal was brought against an order of the District Court granting a stay of execution in a possession case pending appeal.

Held: the granting of a stay of execution, though discretionary, should be exercised on correct principles. The fact that the defendant cannot be restored to his original position if his appeal succeeds is not a sufficient ground. It might be an important factor to be taken into consideration if there were other grounds, for example, that there were merits in the appeal.

DISTRICT COURT APPEAL.

N. L. Macassey for the appellants.

Respondent unrepresented.

Cur. Adv. Vult.

Brown, J. : — This is an appeal from an order granting a stay of execution in a possession case. The order for possession had been made upon the ground that the defendant had used or permitted the premises to be used for an illegal purpose, viz. the keeping of pigs without a licence from the Rural Board.

The application for a stay of execution was not made at the conclusion of the case, and when the application was subsequently made no affidavit in support was filed. The learned District Judge explains this upon the ground that the plaintiff's counsel, while drawing attention to the absence of an affidavit, took no objection upon that ground, and as the facts were within the knowledge of the Court the application was heard as if it had been made at the conclusion of the case. In this Court counsel for the appellant does not agree that he took no objection before the learned District Judge.

The learned District Judge had a discretion to grant a stay of execution. And I should not think it right to interfere with the exercise of his discretion if I was satisfied that he had exercised it on correct principles. There is no rule of practice limiting the exercise of his discretion. But it is a clear principle that the Court will not deprive a successful party of the fruits of his litigation until an appeal is determined, unless the unsuccessful party can shew special circumstances to justify it. The only ground, so far as appears in the written grounds for granting this stay, is that if the defendant succeeded in his appeal he could not be restored to the same position as before because the plaintiffs would have removed his pig-sty. That ground, standing alone, in my opinion cannot be a sufficient ground on which to grant a stay of execution. It seems to me that to hold otherwise would be to establish a precedent, and in effect to lay down a rule of practice, that in all cases where the defendant cannot be restored to his original position if his appeal succeeds, a successful litigant is to be deprived of the fruits of his litigation until such time as the appeal is determined. Such a ground might well be an important factor to take into consideration if there were other grounds. If, for example, another ground had been that there were merits in the appeal, that fact coupled with the fact that the defendant, if successful, could not be restored to his original position might well have afforded special circumstances to justify the learned District Judge in exercising his discretion to grant a stay; and I should not have thought it right to interfere.

In the absence of an affidavit I have considered whether any special circumstances which could justify the order for a stay of execution can be found in the Record of the trial or in the learned District Judge's Grounds of Decision in the action. I can find none. I am therefore left in this position :—

- (1) there is no affidavit setting out the special circumstances which are alleged;
- (2) the Record discloses no special circumstances;
- (3) the only ground given by the learned District Judge for granting this stay does not amount to special circumstances which would justify it.

The appeal must therefore be allowed. No order as to costs.

Appeal allowed.